

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO.: 3:10-CV-318-DSC**

SYMETRA LIFE INSURANCE)	
COMPANY,)	
)	
Plaintiff,)	ORDER
vs.)	
)	
BARBARA HUFFSTETLER, et. al.,)	
)	
Defendants.)	
)	

THIS MATTER came before the Court on “Defendant Barbara Huffstetler’s Motion for Summary Judgment” (document #21) and the parties’ associated briefs and exhibits. See documents ## 22-27.

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c).

The Court finds that Defendant’s Motion is premature since discovery is ongoing. See Fed. R. Civ. P. 56(f);¹ Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986) (if there has been inadequate time for discovery, summary judgment should be denied or resolution of the motion continued); Evans v. Technologies Applications and Serv. Co., 80 F.3d 954, 961 (4th Cir. 1996) (same); Cray Communications, Inc. v. Novatel Computer Systems, Inc., 33 F.3d 390, 394 (4th Cir. 1994) (same).

The Court further concludes that it is more efficient to deny the Motion, subject to Defendant’s right to re-file, rather than postpone ruling on the Motion.

¹Fed. R. Civ. P. 56(f) provides:

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

NOW, THEREFORE, IT IS ORDERED:

1. "Defendant Barbara Huffstetler's Motion for Summary Judgment" (document #21) is **DENIED WITHOUT PREJUDICE**, that is, Defendant may file a Motion for Summary Judgment (raising these and any other issues she chooses) at the conclusion of the discovery period and prior to the expiration of the dispositive motions deadline.

2. The Clerk is directed to send copies of this Order to counsel for the parties.

SO ORDERED.

Signed: February 7, 2011



David S. Cayer
United States Magistrate Judge

